

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

OFELIA REGINA VASQUEZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 3312

Decision No. CU - 1516

Counsel for claimant:

Karl C. Brett, Esq.

AMENDED PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$130,850.00, was presented by OFELIA REGINA VASQUEZ, and is based upon the asserted ownership and loss of certain real estate, personal property and bank deposits. Claimant has been a national of the United States since birth.

By Proposed Decision issued March 4, 1970, the Commission denied this claim for failure of proof. Since then, certain evidence has been submitted, and the Proposed Decision is hereby amended.

Claim was originally asserted for the following:

1. Apartment 101, Building 15 and K, at Calle 15, No. 202, Corner of K, Vedado.
2. Boutique conducted in the apartment.
3. Pent house at Calle 15, No. 274 between J and I Vedado, with furniture, appliances and installations.
4. Stock interest in Cervejera Antillana.
5. Bank accounts in Banco Garrigo, First National of New York and Trust Co. of Cuba.

Claimant has submitted pass book of First National Bank of New York, La Lonja Branch, reflecting a balance of 2,000 peso on July 3, 1959; and a passbook of Banco Garrigo, Havana, reflecting a balance of 20,150 pesos on July 15, 1959.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

In the absence of evidence to the contrary, the Commission finds that claimant's above-described bank accounts, totalling 22,150 pesos (which were on a par with United States dollars) were taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Claimant has also submitted contract by which she purchased on August 26, 1959 Apartment 101 in the Building 15 and K, for \$14,000 of which \$5,600 was paid in cash and \$8,400 was the subject of a mortgage which the record establishes has been paid.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that claimant's apartment in Vedado was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of

properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes the above described contract of purchase. Based on the entire record, the Commission finds that the Apartment No. 101 had a value of \$14,000 on the date of loss.

Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$36,150.00 within the meaning of Title V of the Act, as the result of the taking of her property by the Government of Cuba.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$14,000.00
December 6, 1961	22,150.00
	<u>\$36,150.00</u>


Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that OFELIA REGINA VASQUEZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Six Thousand One Hundred Fifty Dollars (\$ 36,150.00) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

Dated at Washington, D. C., and  
entered as the Amended Proposed  
Decision of the Commission

SEP 23 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)

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Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$130,850.00, was presented by OFELIA REGINA VASQUEZ, and is based upon the asserted ownership and loss of certain real estate, personal property and bank deposits. Claimant stated that she acquired United States nationality through her parents.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership and loss of certain real estate and personal property, including furniture, equipment, and merchandise. She also asserts ownership of cash deposited in several Cuban banks, and of an interest in securities issued by an entity known as "Cervecera Antillana Joaristi of Cuba". Claimant states that she is a national of the United States. Claimant has not submitted any documentary evidence in support of this claim.

By Commission letter of August 22, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. On January 17, 1968, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership, by a national or nationals of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

APR 10 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

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